



The

# COMPLIANCE CONNECTION



*Your liquor law link to the ABC!!*

Vol. 10, No. 1

The Utah Department of Alcoholic Beverage Control

Winter 2002

**“Driving under the influence is one of Utah’s most prevalent and costly crimes. Each year it causes more than 1,700 senseless injuries or deaths in Utah, costing the state’s taxpayers and victims more than \$413 million. We must do all we can to prevent this deadly violence on our roadways.” - Governor Michael O. Leavitt**

This issue of The Compliance Connection focuses on the importance of serving alcohol responsibly. We have featured a guest article that illustrates the impact of over-service on all of us. The Utah Highway Patrol and the liquor law enforcement division want holders of alcoholic beverage licenses to make sure controls are in place to prevent intoxication and to keep drunk drivers off the roads. Last year the Governor signed into law six bills that enhance DUI offender accountability and expanded the alcohol server training requirements to include managers and supervisors.

## Drunk Driving - A Victim’s Perspective

By Art and Jaynie Brown

**W**hen you are emotionally bonded with someone-- truly bonded -- something magic happens. There is a happiness and feeling of delight that pervades your soul, and you look forward to just being around that person. When you are separated, you feel a longing to be together. When that longing cannot be filled, you feel more than loneliness — you feel real physical and emotional pain.

We were bonded with our four-month old grandson, Matthew, and we sensed he was bonded to us.

He especially loved his mother, our daughter Natalie. She was beautiful, sweet, gentle

and sensitive, and she adored this baby. She hated to leave him. If ever she went out, to a meeting or someplace she could not take him, he refused to sleep. He would wait, awake and anxious, sometimes hours past his bedtime, until she returned home. And then as she took him up in her arms he would snuggle into her chest, sigh a big sigh of relief, and fall asleep.

He had just fallen asleep one night, strapped snugly in his car seat in the back seat of his parent’s Honda, when a drunk driver, who had spent the past six hours in a local bar, staggered out and got into his car.

The server knew the man was over-intoxicated. Later the drunk driver reported that "as long as he kept giving her money, she kept giving him drinks." When he ran out of money and became disruptive, the bouncer threw him out. With a BAC of .23, he became a death-trap, careening down highway I-15 in his big borrowed van. He was too drunk to notice the line of stopped cars waiting their mandatory exit from I-15 construction, and he plowed into the back of them.

As the force of his vehicle hit their standing car, the trunk and back seat was crushed up against the front. Baby Matthew and his 2 year-old brother M.J were squashed in their mangled car seats against the front

seat. No one can imagine the horror our daughter felt as she looked over to see her husband draped unconscious and bleeding over the steering wheel, and then turned to see M.J.’s legs broken off near his hips and stuffed back behind his ears; and then to see her beloved baby Matthew, squashed unconscious

in his car seat. She managed to free Matthew and hold him as she tried to comfort the shock, while pain consumed M.J., the little two year old.

Trapped in her mangled car for 20 minutes while emergency medical personnel struggled to free them, holding her dying baby in her arms, she managed to call us from a cell phone slipped through a broken window by a passing motorist. She asked us to meet the Life-flight helicopter at Primary hospital and pray for her boys. We raced for Primary Hospital and stood in horror and

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***"As long as he kept giving her money, she kept giving him drinks."***

**Drunk Driving - A Victim's Perspective***Continued from the Previous page*

disbelief as the medical personnel rushed our sweet little boys past us on their gurneys.

For three days and nights we hovered at their bedsides, filled with horror, disbelief and grief, praying for a miracle. But in the end baby Matthew died. The two year old spent the next 8 weeks in a body cast, withering in pain as muscle spasms twisted his bones apart, and nightmares filled his sleep. The nightmare continues for our daughter, who says it feels like a part of her heart has been ripped out. That is an accurate description. Baby Matthew's loss was a pain so immense that if I were able to scream it out, it would fill the whole State with horror and grief.

We go often to put flowers and balloons on his grave. We brush the dust from his beautiful face engraved on his headstone, hug each other, say a prayer and weep.

We sense that he feels the ache as well, for we felt the yearning of his soul for the touch of his mother, for the life that was torn away from him. When we see a baby being snuggled by its mother, we are reminded of him. When a little boy runs by in play, we are reminded that he

never got to run or play.

And we wonder why our society values liquor profits over life — and why we permit the slaughtering of our innocents. Why do we not rise up in outrage and indignation and demand an end to over-intoxication and drunk driving? Why were we not incensed enough to get involved before it happened to us? It was because we never knew the pain of the loss.

It is our fervent wish that no other family suffer the

needless grief that our family has experienced. I wish that every person who ever dared to drink and drive — and every person who sells liquor to intoxicated persons — could spend just one night in the shoes of my daughter and son-in-law as they held their dying baby in their arms, sang him his last favorite song, tearfully kissed his soft

cheeks and then watched with grief and horror as his life-support systems were unplugged and he turned cold and dark.

I hope everyone who reads this will take a moral stand to do something to make a difference in over-intoxication and drunk driving. Because until we all care enough to make a difference, the next baby Matthew could be yours.Ě

***Why were we not incensed enough to get involved before it happened to us?***

***It was because we never knew the pain of the loss.***

## Everyone Loses as a Result of The Unlawful Service of Alcohol

By Earl Dorius

**N**o one wins and everyone loses when our licensees unlawfully serve alcohol to underage, intoxicated and interdicted persons who then leave the establishment and injure others. The victims and their families obviously suffer immeasurable losses, and no amount of damage award can ever fully compensate them or make them whole. The patron who was unlawfully served and who injures another loses by facing criminal charges, civil judgments for the damages they have caused, and possible life-altering injuries to themselves. The employee of the bar, club or restaurant who unlawfully served the alcohol loses by facing potential

criminal charges. If convicted, the employee could be banned from working for any DABC licensee for many years to come. The business establishment that unlawfully served the alcohol loses by facing potential third party strict liability under the dram shop statutes and a possible loss of its license. And we all lose when the insurance companies increase their premiums to cover the cost of general liability and dram shop liability insurance claims.

Here's a case from New York that shows the devastating effects of unlawful alcohol service (printed by permission from the State Capitals Newsletter):

The owner of a bar accused of serving students involved in a car crash that killed four people has declared bankruptcy. Michael Dorman, owner of Dorman Enterprises and Peabody's Tavern in Hamilton, New York, has filed for Chapter 7 bankruptcy protection with

anticipated debts of \$10,152,078.52 — most of which he expects to owe to the families of two of the victims.

On Nov. 11, Colgate student Robert R. Koester, 20, crashed his Jeep Cherokee into some trees with six passengers. Four of the passengers, including 18-year-old

Emily Collins, died. The crash also killed Koester's friend Kevin King, 20, and two of Emily's friends, Katherine J. Almeter and Rachel H. Nargiso, both 18. Collins, Almeter, Nargiso

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## Everyone Loses

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and a fourth friend were catching a ride with Koester back to Colgate the night of the crash.

Police later charged Koester with second-degree vehicular manslaughter, indicating he was driving drunk at the time. He pleaded guilty in August and is awaiting sentencing.

In May, the families of

Collins and Almeter filed complaints in Chenango County Court seeking \$10 million each in compensatory and punitive damages from Koester; the owner of the Jeep Cherokee; the fraternity where Koester had come from before the crash; and the manager of the bar.

The suits specifically accused Dorman and his company of showing "reckless disregard for the safety and rights" of the passengers who were killed.

Peabody's lost its liquor license and closed in December, after a police raid Dec. 7 that found 33 minors drinking in the bar.

Dorman's bankruptcy lawyer, Randy Schoal, declined to comment.

Dorman filed for bankruptcy Sept. 4. Among the debts listed in his filing are \$5 million each to the Almeter and Collins families; \$100,000 to the family of Rachel Nargiso; and other personal debts.

[Note that the extent of dram shop recovery in Utah is limited to that provided in Utah's dram shop statute. *See Adkins v. Uncle Barts, Inc.*, 1 P.3d 528 (January 18, 2000).]

## Server Training is Now Required for Managers and Supervisors

By Neil Cohen

In the 2001 legislative session, the legislature passed a law that expanded the requirements of who has to take the alcohol server training seminar. The law requires every individual who is employed to:

- (a) sell or furnish alcoholic beverages to consumers for consumption on the premises, or
  - (b) manage or supervise the service of alcoholic beverages;
- to complete an Alcohol Server Training and Education Seminar.

Alcohol servers, managers, and supervisors must complete the training within 30 days of commencing employment.

Persons holding an ownership interest in an on-premise licensed establishment must also take the seminar if they perform duties as a manager, supervisor, or server and must complete the seminar within 30 days of engaging in serving, supervisory or managerial roles.

All required persons must take and pass the seminar every three years.

A list of server training providers is available on-line at [http://www.utahdsa.com/Alcohol\\_Server\\_Providers.htm](http://www.utahdsa.com/Alcohol_Server_Providers.htm) Æ

## Drinking and Not Driving

**Q:** Is it okay to over-serve a person if you know that the person will **not be driving**?

**A:** It is **never** legal to over-serve alcoholic beverages to a person whether or not that person will be driving an automobile. Intoxication often contributes to situations that involve assault and abuse, including domestic abuse. Also, though the intoxicated person may be taken home by a friend or in a cab, you have no way of guaranteeing that he/she will not then get behind the wheel of an automobile. Æ

## The DABC Website

Our website, [www.alcbev.state.ut.us](http://www.alcbev.state.ut.us), has lots of information about the liquor laws, the Olympics, stores and agencies, products and prices, server training, interesting links, and more. Some pages are still under construction, and new information and services will be added as they are developed. If you have any comments or suggestions, please e-mail us at [abcmain.hotline@state.ut.us](mailto:abcmain.hotline@state.ut.us). Æ

## Alcohol Server Training Programs

Approved by the Division of Substance Abuse  
December 11, 2001

Service Industries, Inc. (Serves Wasatch Front)  
3438 Buck Circle  
SLC UT 84121  
(801) 942-0742  
Contact: Lou Bertram

The SMART Program (Statewide)  
PO Box 71115  
SLC UT 84171  
(801) 265-9435, Cell 801-915-8609  
Contact: Jerry Diana

The TIPS Program (Statewide\*)  
Health Communications, Inc.  
1101 Wilson Blvd, STE 1700  
Arlington VA 22209  
1-800-GET-TIPS

SUU Southern Utah University  
(Iron, Beaver, Garfield, Kane and Washington)  
SUU-351 W Center St  
Cedar City UT 84720  
435-586-2384  
Contact: Danny Shakespear

BARCODE \*\*\*\*\*Spanish and English (Statewide)  
9494 S Prosperity Rd  
West Jordan Ut 84088  
801-563-6300  
Local contact: Toni Jorgensen, Sysco Intermountain

The programs are authorized and approved by the Division of Substance Abuse (DSA) within the Department of Human Services (phone: 801-538-3939 or on-line at [http://www.utahdsa.com/alcohol\\_server\\_training.htm](http://www.utahdsa.com/alcohol_server_training.htm)). Individual trainers are certified by each of the programs.

## The New Server Training Data Base is Now On-Line

The website of the Division of Substance Abuse has been upgraded and updated. It now has a link to a server training data base where you can look up the names of servers who have completed the seminar and whose training is current/expired/or about to expire. This data base can be found at the following address:

[http://www.utahdsa.com/alcohol\\_servers.htm](http://www.utahdsa.com/alcohol_servers.htm)

## Keep Your Drink Price List Current

by **Stephne Hanson**

**M**ixed drinks and wine may not be sold at a private club, restaurant or airport lounge at discount prices on any date or at any time. This law went into effect in 1990 when the 1.7 ounce mini-bottle was eliminated in favor of 1ounce metered dispensing. The argument in favor of the law change was that overall consumption would be reduced.

In keeping with this concept, the law also restricted discounted pricing on the theory that it encourages increased consumption. And rules were passed prohibiting advertising that encourages over-consumption or intoxication, or that

includes promotional schemes such as "happy hour" or "all you can drink for \$ ...".

Because of these discounted pricing laws, clubs, restaurants and airport lounges are required to file with the DABC a complete price list of the mixed drinks and wine they serve by brand and selling price. They may not sell these products at a price that is reduced from the established price on the list on file with the DABC.

Please note, it is very important that the list you have on file with us is current and up-to-date. Here's why. If any undercover law enforcement officers suspect a

situation of discounting drinks, they will typically call the DABC to see what the established price is on the official drink list you have filed with our department. If the price you are charging for any drink is less than what is listed, you may end up with a violation.

To avoid such situations, we urge you to immediately notify us when you make any change to your wine list or alcoholic beverage menu. Send us a copy of the new list without delay.

Please call your compliance specialist at 977-6800 if you have any question about which list you currently have on file with us.É

## Update on The New Advertising Rules

By Earl Dorius

The last issue of the Compliance Connection (Vol. 9, No. 3) included two detailed articles on the new alcohol advertising rules. However, those articles were based on the temporary, emergency rules the Commission had passed in August. By law, emergency rules expire after 120 days. During the 120 period, the Commission held public hearings and invited written comments on the emergency rules.

From that input, the Commission drafted some proposed final rules, published them in the Administrative Bulletin, and invited further public comment. After reviewing the additional comments, the Commission met and approved final advertising rules which became effective on December 6, 2001.

The final rules incorporated virtually all of the features of the prior emergency rules but with two new additions:

1. They allow special use permittees to advertise alcoholic beverages. This will allow scientific or educational permit holders that conduct wine education classes to advertise the nature of their classes in public advertising.
2. Alcohol industry members may give retailers certain advertising items (called "consumer advertising specialties" in federal law) such as pens, matchbooks, key chains, hats, etc., to the extent allowed by federal law.

Retailers may then furnish these items to their customers.

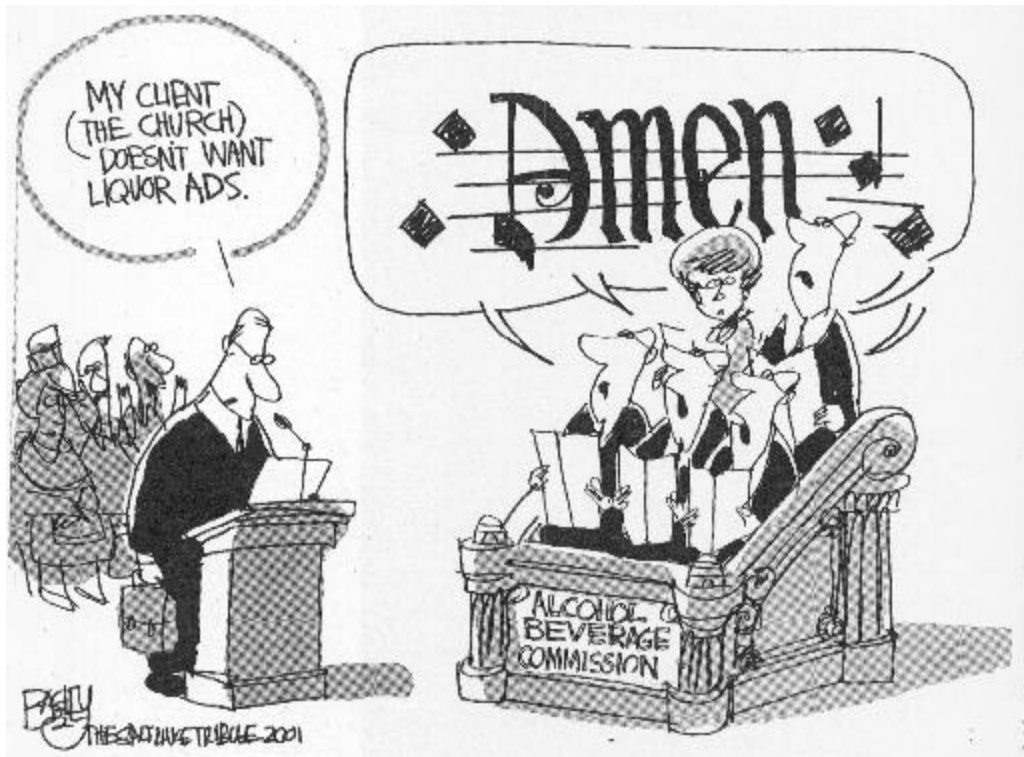
Added to the advertising guidelines of the prior emergency rules were a few new concepts obtained largely from the Distilled Spirits Council of the United States (DISCUS) *Code of Good Practice for Distilled Spirits Advertising and Marketing*:

Alcohol advertising may not:

1. Refer to, portray or imply abusive or violent relationships or situations, or anti-social behavior except in the context of public service advertisements or announcements to educate and inform people of the dangers, hazards and risks associated with irresponsible drinking or drinking by persons under the age of 21 years
2. Promote the intoxicating effects of alcohol consumption
3. Be directed to minors by being placed on the comic pages of magazines, newspapers, or other publications
4. Portray use of alcohol by a person while that person is engaged in, or is immediately about to engage in, any activity that requires a high degree of alertness or physical coordination
5. Imply by use of appealing characters or life-enhancing images that consumption of the product will benefit the consumer's sexual prowess.

The actual text and an overview of *all* of the provisions of the new rules is now posted on our website: [www.alcbev.state.ut.us](http://www.alcbev.state.ut.us). If you have any questions about the rules, please contact our compliance division at (801)-977-6800. E

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## On-Premise Beer License Renewals

### Criminal History Information Requirement

By Neil Cohen

**T**his is the time of year when holders of on-premise beer retailer licenses will be filling out the renewal application forms. You will see a yellow cover sheet with information about the criminal background check requirement.

As a licensee, you only need to have criminal background checks done on **new** managers, or **new** officers and directors listed on "form C" in the renewal packets. This includes those who were hired or appointed *since* the last renewal, or, in the case of new licensees who were licensed after March 1, 2001, since you received your license.

We send samples of the criminal background check forms in the packet for both residents and non-Utah residents. If you need additional forms, please call us and we'll send them to you. Utah residents should request criminal history information from The Utah Bureau of Criminal Identification (BCI) on the forms we provide.

If you have web access, you can download the BCI forms at BCI's website. On the forms page (<http://www.bci.state.ut.us/bciforms.html>) forms can be found under the "right of access application". The forms themselves are at <http://www.bci.state.ut.us/roa.pdf>. However you need the Adobe Acrobat Reader which you can download from the site too.

New managers, officers and directors who are not Utah residents will have to obtain their criminal history information from the National Crime Information Center (NCIC) of the FBI. This will take longer to process.Ě

### Renewal Reminders

**R**emember, you must send in your completed on-premise beer license renewal application by **Thursday, January 31, 2002**. This deadline is set by the legislature and we cannot extend it. If you miss this deadline, you may not renew and you will have to re-apply all over again for an on-premise beer retailer license. This means you will have to pay another \$300 application fee in addition to the \$100 license fee. Please do not wait until the last minute.

You may either hand deliver (by 5:00 pm on **January 31, 2002**) the completed renewal or we will accept a postmark up to and including **January 31, 2002** as timely. You do *not* have to pay extra for overnight mail to get it here by **January 31, 2002**. If for some reason you bring your renewal to the post office on **January 31, 2002**, make sure the post office puts that day's postmark on your envelope; right there, in front of you, at the window, while you watch. If your local post office is closed, the Salt Lake airport post office is open 24 hours. As long as you get there before midnight on the 31<sup>st</sup>, you can get that date's postmark.

Finally, we send you a separate notice *if* you have delinquent taxes or are otherwise not in good standing with the Utah Tax Commission (sales tax/payroll withholding), Labor Commission, Division of Industrial Accidents (workers compensation coverage), or The Department of Workforce Services (unemployment insurance tax requirements). We provide you with phone numbers and contacts in each agency. Please take action to clear up the delinquency as soon as possible. Your license cannot be renewed if the delinquency is not cleared. If you have any questions about your license renewal, please contact the DABC licensing and compliance office.Ě

## 2002 Holiday Calendar

New Years Day . . . . . January 1<sup>st</sup> (TUE)  
 Martin Luther King Jr. Day . . . . January 21<sup>th</sup> (MON)  
 Washington and Lincoln Day . February 18<sup>th</sup> (MON)  
 Memorial Day . . . . . May 27<sup>th</sup> (MON)  
 Independence Day . . . . . July 4<sup>th</sup> (THU)  
 Pioneer Day . . . . . July 24<sup>th</sup> (WED)  
 Labor Day . . . . . September 2<sup>nd</sup> (MON)

Columbus Day . . . . . October 14<sup>th</sup> (MON)  
 Veteran's Day . . . . . November 11<sup>th</sup> (MON)  
 Thanksgiving Day . . . . . November 28<sup>nd</sup> (THUR)  
 Christmas Day . . . . . December 25<sup>th</sup> (WED)  
 ! Election Days hours apply in 2002  
 Primary Election . . . . . June 25<sup>th</sup> (TUE)  
 General Election . . . . . November 5<sup>th</sup> (TUE)

## Licensing Activity

By Chris Johnson

### NEWLY LICENSED ESTABLISHMENTS

September, October, & November

#### RESTAURANTS

Athenian, Ogden  
 Burgie's, Park City  
 California Pizza Kitchen, Salt Lake City  
 Chenez, Park City  
 Chili's, Layton  
 Chili's, Midvale  
 Chili's, Morgan  
 Chili's, Orem  
 Chili's, Riverdale  
 Chili's, Salt Lake City  
 Chili's, Sandy  
 Chili's, St. George  
 Chili's, West Jordan  
 Chili's, West Valley  
 Depot, Layton  
 Diamond Lil's Steakhouse, West Jordan  
 Don Pedro's, St. George  
 Five Star, Roy  
 Fleming's Prime Steakhouse & Wine Bar, Salt Lake City  
 Gondola @ Holiday Inn, Cedar City  
 Happy Sumo @ the Gateway, Salt Lake City  
 Hideway, Parowan  
 L' Avenue, Salt Lake City  
 La Dolce Vita, Provo  
 No Worries Café & Grill, Park City  
 Osaka Japanese, Salt Lake City  
 Paris, Salt Lake City  
 Roma Ristorante, Salt Lake City  
 Samurai Sushi, Salt Lake City  
 Senor Gecko, Brian Head  
 Sophie Garcia's, Salt Lake City  
 Star of India, Salt Lake City  
 Tucci's Cucina Italiana, Sandy  
 Yummers, Helper  
 Z' Tejas @ The Gateway, Salt Lake City  
 Zion Majestic View Lodge, Springdale  
 Zona Rosa, Park City  
 (38)

#### PRIVATE CLUBS

Club Chalet, Brian Head  
 Nightscape, Salt Lake City  
 Shaggy's Livin Room, Salt Lake City  
 Spur, Park City  
 Zanzibar, Salt Lake City  
 Club at Vivace, Salt Lake City  
 Club illusion, Ogden  
 Club Poplar Place, Moab  
 Pop's Place, Salt Lake City  
 (9)

#### ON-PREMISE BEER

Birrieria Lalos, Midvale  
 Bonjour Café, Salt Lake City  
 Brewhouse Pub, Salt Lake City  
 Ceders, Ogden  
 China Lily Restaurant, Provo  
 Copacabana Grill, Layton  
 Coyote Moon Restaurant, Huntington  
 Davis Lanes, Layton  
 El Centenario, Salt Lake City  
 El Habanero, Magna  
 El Nuevo Amanecer, Ogden  
 Hunan Garden, Salt Lake City  
 La Casa Chaparros, Layton  
 La Casa Chaparros, S. Ogden  
 Melina's Mexican Restaurant, Taylorsville  
 Nuevo Vallarta, Kearns  
 Perkins Café & Bakery, Salt Lake City  
 Sparetime Family Fun Center, Roy  
 Taqueria La Autentica, West Valley City  
 Taqueria Lolita, Salt Lake City  
 The Livin Room, Salt Lake City  
 Two Compadres Bar & Grill, Ogden  
 Xtreme Pizza, Brian Head  
 Yummers, Helper  
 (24)

#### LICENSES AVAILABLE (as of November 29, 2001)

Restaurants = 6  
 Private Clubs = 13  
 On-premise Beer = no quota

#### Licenses relinquished

September, October, & November

#### RESTAURANTS

Bangkok Garden, Ogden  
 Blue Lagoon, Sandy  
 Brandin Iron Steakhouse, Pine Valley  
 Buffalo Joe's Smokehouse, Murray  
 Burch's Café, Mexican Hat  
 Chaparro's, So. Ogden  
 Charley O's Grill, Midvale  
 Chiili's, Layton  
 Chili's, Logan  
 Chili's, Midvale  
 Chili's, Orem  
 Chili's, Riverdale  
 Chili's, Salt Lake  
 Chili's, Sandy  
 Chili's, St. George  
 Chili's, West Jordan  
 Chili's, West Valley City  
 Copacabana Grill, Layton

Diamond Lil's, Orem  
 Diamond Lil's, West Jordan  
 Dos Serranos Beach Grill, Provo  
 Grapevine, Logan  
 Horny Toad Bar & Grill, Ticaboo  
 HR Weston, Vernal  
 Hunan, Salt Lake City  
 Jade Garden, Delta  
 La Casita, Orem  
 Last Outpost, Salt Lake City  
 Lodge at Red River Ranch, Teasdale  
 Mi Ranchito Restaurant, Salt Lake City  
 Mullboons @ Olympus Hotel, Salt Lake City  
 Palermo's Pizza & Pasta, Ogden  
 Ristorante Emilia, Sandy  
 Rocky Mountain Grill, Salt Lake City  
 Sakura Sushi, Salt Lake City  
 Sunset Beach, St. George  
 Switchyard @ Pinnacle Gate Station, Price  
 Yesteryear's @ Raddisson, Ogden  
 (38)

#### PRIVATE CLUBS

Cork's Club, Price  
 Club Emilia, Salt Lake City  
 Ritz Club, Salt Lake City  
 Slang Club, Salt Lake City  
 Bojangles II, Murray  
 (5)

#### ON PREMISE BEER

Athenian Restaurant, Ogden  
 Bell Ami, Salt Lake City  
 Brookhaven Brewery & Grill, Midvale  
 Burgie's, Park City  
 Coconut Point, Kearns  
 Davis Lanes Lounge, Layton  
 Fitzgerald's Family Bowling Center, Roy  
 Gallivan Center, Salt Lake City  
 Penney's, Stockton  
 R & R Tavern, Grantsville  
 Ray's of Moab, Moab  
 Rubio's Baja Grill, Layton  
 Rubio's Baja Grill, Taylorsville  
 Rubio's Baja Grill, West Jordan  
 Yummers, Helper  
 (15)

#### Restaurant Renewals

Renewals (mailed) 522  
 Non-renewals 10

Current number of licensees

Restaurant =	512
Private Clubs =	315
On-premise Beer =	483
Total =	1310



## Violations and Penalties by Chris Johnson

Below are the most recent violations and penalties assessed. Please review the violations listed below with your staff to prevent similar violations from occurring in your own establishment. As you can see by the number of alcoholic violations listed, law enforcement agencies have been very active. PLEASE BE CAREFUL!!

AL = Airport Lounge   BE = On-premise Beer   BR = Brewer / Importer   BW = Beer Wholesaler   CL = Private Club Liquor  
RE = Restaurant Liquor   MR = Manufacturer Representative   \* = Prior Violation History   > = Taken to formal hearing

License Type	Name of Establishment	Description of Violation(s)	Penalty Assessed
RE	Applebee's, St. George	Sale of alcoholic beverage without an order for food	Written warning
RE	Red Lobster, St. George	Sale of alcoholic beverage without an order for food	Written warning
CL	Teazers, Ogden and Samuel Oetinger and Janalee Chambers (employees)	1. Non-member entry & sale 2. Sale to a minor	1. Fine of \$350.00 2. 5 day suspension plus costs Employees: Samuel Oetinger- Written warning Janalee Chambers- 5 day suspension
RE	Totem's Café & Steakhouse, Salt Lake	Sale of alcoholic beverage without an order for food	Written warning
RE	Yen-Jing Restaurant	Seasonal licensee selling alcoholic beverages on prohibited days	Fine of \$750.00 plus costs
BE	Anchors Aweigh, Salt Lake and Troy Anderson (employee)	Sale to a minor Untrained server	1. 5 day suspension and a \$150.00 fine 2. Fine of \$100.00 plus costs Employee: 1. 5 day suspension 2. Written warning
RE	Outback Steakhouse, Orem, and Nichole Stafford (employee)	Sale to a minor	1. Fine of \$3,000.00 plus costs Employee: 5 day suspension
CL	Ritz Club, Salt Lake	Only 2 members on governing board Failed to maintain membership records Failed to maintain minutes of meetings Failed to provide tax returns Failed to provide DABC with current lease	Surrender of private club license and pay a fine of \$200.00 plus costs
CL	Gatorz, Midvale and Mike Adamson (employee)	Non-member entry & sale	1. Fine of \$500.00 plus costs Employee: Dismissed without prejudice
RE	Mo's, Salt Lake and Brandy Smith (employee)	1. Discounting drinks 2. Sale of alcoholic beverage without an order for food	1. Fine of \$100.00 plus costs 2. Fine of \$150.00 Employee: Written warning

The Alcoholic Beverage Control Commission usually meets on the fourth Friday of each month. Meeting dates and times are subject to change. Please call 801-977-6800 for the meeting schedule.

The meetings are open to the public and are held in the board room at the DABC administrative office building; 1625 South 900 West, Salt Lake City. All interested persons are welcome to attend.



## Returned Checks = License Revocation?

by Abe Kader

The number of returned checks from our licensees has increased, according to Rae Jordison, the DABC Accounting Manager. Ms. Jordison said that "the increase includes licensees who have had returned checks in the past." The consequences of having a check returned can be as simple as a \$20 returned check charge and being placed on COD or as serious as a license **revocation** and **forfeiture** of a bond.

Checks are returned for the following reasons: (1) insufficient funds, (2) refer to maker (3) account closed or (4) stop payment. The Commission Rule states that "Receipt of a check payable to the department which is returned by the bank for any of these reasons may result in the **immediate suspension** of the license, permit or operation of the package agency of a person tendering the check..." [R81-1-3 (7)]

If a suspension is imposed and the face value of the check plus the \$20 returned check charge is not paid, it could result in a revocation of the license. The rule states that "Failure to make good the returned check and

pay the twenty dollars returned check charge within **thirty days** after the license, permit, or operation of the package agency is **suspended**, is grounds for **revocation** of the license or permit, or **termination** of the package agency contract, and the **forfeiture** of the licensee's, or package agent's bond." [R81-1-3 (7)]

Returned checks are currently processed by TeleCheck, a check collection agency. If a check does not clear the bank it is sent to TeleCheck for collection. TeleCheck will notify the person tendering the check that they owe a \$20 returned check charge. The check is then redeposited or the person tendering the check can authorize an electronic fund transfer. If the check is returned again, TeleCheck will send a collection notice for the face value of the check plus the \$20 returned check charge.

If you have a check returned, please make it good as soon as possible. The customer service office for TeleCheck can be reached at 1-800-366-2425. E

## A Few Words About Warning Signs

By Tom Zdunich

As you know, state law requires every state store, package agency, DABC licensee and permittee to display "in a prominent place" a warning sign that reads: "Warning: The consumption of alcoholic beverages purchased in this premises may be hazardous to your health and the safety of others."

During recent visits with licensees, our staff has sensed that some have rather loosely interpreted the meaning of "prominent place" to include: behind the cash register, on the floor, in the hallway to the restrooms, on the back bar behind the pickled eggs, and even under the condiments in the kitchen. Webster's Dictionary defines "prominent" as "standing out so as to be seen easily; conspicuous; particularly noticeable." The purpose of the law is to inform your patrons. The signs need to be placed in locations that will provide adequate notice to them.

We recommend that you post the sign at eye level

where most patrons may readily see it. Avoid putting it in a location where visibility is limited such as behind the bar where perhaps only one bar patron can see it. If you have several separate locations on your premises where alcohol will be consumed, we recommend you post a warning sign in each location. Alternatively, you may want to place the sign at the entrance of your establishment so all can see it upon entering.

We are also noticing some variations in the actual size and lettering used on some warning signs. Commission Rule R81-1-2(23) requires that the warning sign be "no smaller than six inches high by twelve inches wide, with print no smaller than one half inch bold letters and clearly readable." The DABC provides these signs free of charge to licensees. If you need a new supply, please call the Licensing & Compliance Division at (801) 977-6800. E

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## News From Other States

by John Bryant

In 1990, the Utah Legislature addressed "brown-bagging". Prior to that time, "brown-bagging" or bringing your own bottle into a restaurant, club or tavern and "pouring your own" had been a wide-spread practice. Unfortunately, it created situations where the control was in the hands of the customer, and not the server. The practice led to situations of over-consumption.

The 1990 law eliminated "brown-bagging" altogether in taverns and other beer establishments. Also "brown-bagging" of distilled spirits, heavy beer and beer were also prohibited in restaurants and private clubs.

However, an exception was made with respect to fine wines. Restaurants and private clubs with liquor licenses were

given the discretion to allow patrons to bring in bottles of "cork finished wine". The wine must be immediately delivered to a server or other representative of the restaurant or club who may then perform a wine service and assess a service charge. This has proved to be a nice feature of our law which allows patrons to bring in wines from their own wine-collections, or stop at a state wine store to purchase a special wine for the evening that might not be on the wine list of the restaurant or club.

Residents of Craighead County, Arkansas do not have this feature in their laws, as you will note from the following article reprinted with permission from the *State Capitals Newsletter*:

### Police in Arkansas County that Bans Alcohol Threaten to Stakeout Restaurants

When Harvey and Pat Collins head to Lazarri Italian Oven for dinner, they often bring wine. Few would consider them hardened criminals for doing so, but plainclothes officers in Jonesboro are now on the lookout for their type. Under the rules of this city and county, they're breaking the law.

Jonesboro is in Craighead County, one of Arkansas's 43 dry counties, where drinking in public is banned unless the business has a private liquor license. Getting caught bringing alcoholic beverages, or "brown-bagging," to a restaurant can mean a \$125 fine. Assistant Police Chief Bud Marshall said police are cracking down because they have received complaints.

"We just wanted to warn the people," Marshall said. "We don't want them to do it, and we will make an arrest if

it's done in our presence."

Brown-bagging is not limited to Jonesboro, but officials in other dry counties – where liquor sales are generally banned – rarely go out of their way to enforce the rules.

Barney Reeves, director of the Alcoholic Beverage Control Commission's enforcement division, said he gets occasional complaints, but he said people taking their own wine into restaurants is not a big problem. "That's up to the local law enforcement," he said. "It happens probably a lot more than we know. The people don't have a problem with it."

Lazarri's owners Jerry Flynn and his wife, Susan, have always allowed brown-bagging. It's been a practice in Jonesboro for at least 15 years, they said.

"We do have a number of customers that bring a wine with their

meal," said Flynn, who opened the restaurant in 1996. "Why it would be such a problem now, I really couldn't guess."

Since the 1940's, state law has allowed counties and towns to vote to ban or allow liquor sales within their borders. More than half of the state's counties – 43 of 75 – are dry.

Harvey Collins sees a double-standard in Craighead County's enforcement. Private clubs can serve alcohol and send people onto roads drunk, but people without club memberships can't have a drink at dinner, he said. "We're going to spend a great deal of effort devoting resources to the wine cops versus going out and really addressing the meth labs, the various thefts, abuse," Collins said. Marshall said it's a matter of upholding the law. E

## Myths and Facts About Restaurant and Club Wine Service

By Neil Cohen

**Myth #1** State law requires wine to be opened in the kitchen, not at the customer's table.

**Fact:** No state law requires wine to be opened in the kitchen as opposed to the customer's table.

**Myth #2** Corkage fees are mandated by state law.

**Fact:** A corkage fee is not mandated by state law. The law merely allows restaurants and clubs to charge a corkage fee.

**Myth #3** An empty bottle may not be removed from a restaurant.

**Fact:** The law [32A-4-106(18)] prohibits the removal of alcohol purchased in the restaurant. It does not prohibit a person from removing an empty bottle, merely the removal of alcohol.

**Myth #4** A wine bottle that is only partially consumed may *never* be removed from a restaurant.

**Fact:** The law does not prohibit the removal of cork finished wine that the *customer has brought in* and partially consumed. Wine purchased in the *restaurant* that is only partially consumed may *not* be removed.

**Myth #5** A wine bottle that is only partially consumed may *never* be removed from a club.

**Fact:** The law does not prohibit the removal of partially

consumed bottles of cork finished wine from a club whether *purchased* from the club or *brought in* by the customer. Club law [32A-5-107(24)(o)] only prohibits a member, guest, or visitor to a club to carry from a club premises an open container used primarily for drinking purposes containing any alcoholic beverage.

**Myth #6** A customer may not decant a wine and then bring it in to a club or restaurant.

**Fact:** The law allows a customer to bring in cork finished wine at the discretion of the club or restaurant operator. This includes wine that the customer may have poured out (decanted) in order to remove the sediment from the bottle, then poured back in the bottle, the cork re-inserted and brought to a restaurant.

**Myth #7** Ports and Sherries are not considered wine.

**Fact:** Ports and Sherries fit the definition of wine and may be treated as such. They may be sold by the restaurant or club by the bottle in containers no larger than 750 ml, or by the glass containing a portion size no larger than 5 ounces. State law *does* allow a customer to bring in cork finished bottles of Ports and Sherries to a restaurant or club at the discretion of the licensee.

## Wine Pairing Dinners

By Neil Cohen

Ever since the new advertising rules took effect, we have been asked many questions about (1) wine pairing dinners and (2) the involvement of industry members such as winemakers or winery representatives. These are two separate issues. It is true that the rules now allow wine and liquor to be advertised. But the rules governing an industry member's participation in educational seminars involving liquor, wine, and heavy beer products have not changed.

(1) Club and restaurant licensees may organize and advertise theme dinners with special menus and suggested wine pairings. The wine pairings have to be made available a la carte, and can not be included in the price of the dinner or event. In a licensed restaurant, a patron may only have one alcoholic beverage before him/her at the table. We are now seeing many successful events with guest chefs or theme nights that emphasize the food component and offer wine pairings as an option. Licensees may invite a guest speaker, but the speaker can not be an industry member because, as mentioned above, the Alcoholic Beverage Control Commission did not change the rules governing industry members'

participation.

(2): Industry members are only allowed to participate in three types of educational seminars, and only as an invited guest of the seminar host.

1. An educational class involving the study of alcoholic beverages attended by students who have registered in advance for the course;
2. A privately hosted event or a private social function held by a private group engaged in the study of alcoholic beverages;
3. A private training session held by a retailer (licensee) for the purpose of educating the retailer and its staff on the qualities and characteristics of alcoholic beverages.

At the seminar, the industry member may lecture, analyze, test, and taste. The industry member may not pay for or furnish the alcoholic products used at the seminar. A privately hosted event, mentioned in #2 above is defined as a: *"specific social, business, or recreational event for which an entire room, area, or hall has been leased, rented or reserved in advance by an identified group, and the event or function is limited in attendance to people who have been specifically designated and their guests. [These] do not include an event or function to which the general public is invited whether for an admission fee or not."* Utah Code 32A-1-105(38).

## Bar Structures and Service in Restaurants

By Al Potvien

Restaurant liquor licensees have asked...

**Q: Do the new advertising rules allow us to take down the barriers and serve drinks "over the bar" in restaurants?**

**A: No**

The new advertising laws **do** allow wine lists in restaurant windows and on the patron's tables; allow servers to ask patrons if they would like a cocktail or a glass of wine; and allow the display of bottles of alcohol visible to patrons.

But, there are **five key laws** that have **not changed** with respect to how alcohol is served in restaurants:

1. Alcoholic beverages may not be served or consumed at any location where they are stored or dispensed [i.e. a bar];
2. Alcoholic beverages may not be dispensed directly to a patron from the storage area [i.e. a bar];
3. Alcoholic beverages shall be delivered by a server [i.e. waitperson] to the patron;
4. Any alcoholic beverage may only be consumed at the patron's table; and
5. A patron may only make alcoholic beverage purchases in the restaurant from a server [i.e. waitperson] designated and trained by the licensee.

Also, there are **two key** commission **rules** that

have **not changed**:

1. A patron's table may be located in waiting, patio, garden and dining areas previously approved by the department, but may not be located at the site where alcoholic beverages are dispensed or stored; and
2. Consumption of any alcoholic beverage must be within a reasonable proximity of a patron's table.

The backbone of the restaurant liquor license concept is that restaurants are not bars, but public dining establishments where alcohol is available as a complement to the cuisine and the service of food is emphasized. The **two basic laws** that underscore this are:

1. At least 70% of a restaurant's overall business must be in food sales; and
2. Alcoholic beverages may only be served in connection with an order for food.

**Restaurants that have partitions, barriers, walls, dividers, or screens, that separate the alcohol dispensing and storage area from the consumption area, have to keep them in place.**

The only thing in the new advertising rules that apply here is that the walls or barriers don't have to be opaque because liquor may now be stored where it is visible to patrons of the restaurant.Ě



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